

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES

vs.

Criminal No. 04-30032-MAP

FRANK KEOUGH, et al.,
Defendants

**DEFENDANT'S MOTION TO DISMISS COUNT 29 (EXTORTION)
FROM THE SECOND SUPERSEDING INDICTMENT**

Now comes the Defendant, Francis Keough, in the above-captioned matter, and moves this Honorable Court, pursuant to Rule 12(b) of the Federal Rules of Criminal Procedure, to dismiss Count 29 (Extortion) from the Second Superseding Indictment. As grounds therefor, the Defendant states:

1. Count 29 (Extortion) of the Second Superseding Indictment fails to contain "a plain, concise and definite written statement of the *essential facts* constituting the offense charged," as required by Rule 7(c) (1) of the Federal Rules of Criminal Procedure (emphasis supplied);
2. Count 29 (Extortion) of the Second Superseding Indictment purports to allege violation of 18 U.S.C. § 1951, but fails to state the requisite *essential facts* to support or constitute such an offense;
3. Count 29 (Extortion) of the Second Superseding Indictment fails to charge with reasonable certainty the nature of the offense allegedly committed, and is inherently ambiguous;
4. The ambiguity and defects contained within Count 29 (Extortion) of the Second Superseding Indictment are violative of the Defendant's rights as protected by the Fifth and Sixth Amendments to the United States Constitution;

5. As a matter of law, the insufficiency of these Counts of the Second Superseding Indictment cannot be cured by a bill of particulars.

In further support thereof, the Defendant relies on his Memorandum of Law in Support of Defendant's Motion to Dismiss Count 29 (Extortion) from the Second Superseding Indictment, filed herewith.

Wherefore, by all of the above, the Defendant's Motion to Dismiss Count 29 (Extortion) from the Second Superseding Indictment must be allowed.

THE DEFENDANT,
FRANK KEOUGH

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CERTIFICATE OF SERVICE

I, Dan Kelly, Esq., hereby certify that I caused the foregoing document to be served upon the United States Attorney's Office at 1500 Main Street, Springfield, MA, by electronic service this 27th day of September, 2006.

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